Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning Review of the Equal Access and Nondiscriminatory Obligations Applicable to Local Exchange Carriers	)	CC Docket 02-39
	)	

REPLY COMMENTS OF TDS

The equal access rules are a relic of an era that exists no more — a time not only before cable telephone and VoIP, but before digital switches and fiber optics. TDS Telecommunications ("TDS") files these reply comments to join the chorus of voices calling for an end to the outdated portions of the equal access rules.[1] The equal access rules arguably made sense in yesterday's market, where competition for long distance voice traffic was limited and fragile. Today, with the advent of wireless and cable (and the proliferation of traditional providers), long distance voice traffic competition is alive and well. But more fundamentally, the market has changed. Today's carriers compete in an "all-distance" market. Consumers, especially those not old enough to remember the "pin drop" commercials of the 1980s, have lost any concept of long distance. Yet TDS and other incumbent local exchange carriers ("ILECs") face substantial costs in complying with rules that are

[1] TDS is the parent company of over one hundred incumbent local exchange carrier subsidiaries serving more than 700,000 local access lines in small and rural communities throughout the United States.

no longer necessary, and which are duplicated by structural realities of the system and key provisions of the Communications Act.

I. EQUAL ACCESS NO LONGER SERVES CONSUMERS OR THE PUBLIC INTEREST

A. Today's Long Distance Market Could Not Be More Different Than the Market that Triggered the Equal Access Rule

Today's independent ILECs and regional Bell operating companies (RBOCs) face brisk competition from a variety of sources. As an initial matter, the number of registered interexchange carriers has tripled in the past fifteen years.[2] The past two decades have also seen the emergence of several new forms of competition, which did not exist when the equal access rules were put in place.

Wireless. Deregulation of wireless has led that industry to grow exponentially. Today, there are approximately 217 million wireless subscribers in the U.S. (compared to 172 million wireline access lines) and more than three quarters of households have at least one wireless phone.[3] Some predict that, in three years, between 18% and 25% of consumers will abandon their wireline phones entirely.[4] Even today, wireless subscribers make nearly two-thirds of their long

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[2] Comments of AT&T, Inc. in CC Docket 02-39 (May 29, 2007) at 4 (citing Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Trends in Telephone Service*, at Table 9.4 (Feb. 2007)).

[3] Comments of Verizon Communications, Inc. in CC Docket 02-39 (May 29, 2007) at 3.

[4] *Id.* at 3, A-11 (citing studies).

distance calls over wireless.[5] Indeed, it is common place for wireline customers to use their wireless phones when making long distance calls. This "wireless substitution" for long distance is especially profound and has a depressing effect on wireline long distance minutes.

Cable. According to estimates by the National Cable & Telecommunications Association, cable companies have invested approximately $118 billion (!) in the last ten years.[6] By the end of this year, cable telephone service will likely be available to 95% of U.S. homes.[7] At present, there are nearly 9 million subscribes to cable telephony.[8] Cable, which was not a part of the 1984 voice market, today presents serious competition to traditional telephony all by itself.

VoIP & Text. In addition to these options, today's consumer can — and 2.7 million already have — choose from among the dozens of providers of voice over Internet protocol (VoIP) (e.g., Vonage) that have entered the voice market in recent years. With 44% of all households subscribing to broadband, and with 90% of households able to obtain a broadband connection, this is a very real option.[9]

B. In Reality, Today There is a United, All-Distance Market

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[5] *Id.* at 3.

[6] *Id.* at 2 (citing National Cable & Telecommunications Association, *Cable Industry Infrastructure Expenditures*).

[7] *Id.*

[8] *Id.*

[9] *Id.* at 3-4. This is not even to mention the extent to which today's consumers and businesses rely on non-voice communication, such as email and text-messaging.

In the March 7, 2007, Public Notice inviting interested parties to refresh the record in this docket, the Commission noted that "the market appears to be shifting from competition between stand-alone long distance services to competition between service bundles including both local exchange and long distance services."[10] This is an understatement, as the Commission acknowledged when — in the process of granting Qwest Communications Petition for Forbearance from dominant carrier rules — it referred to stand-alone long-distance services as a "fringe market."[11] That is a correct characterization: stand-alone distance is today a fringe market.

As is well known, wireless carriers pioneered all distance voice services by offering packages of minutes, many of which could be used for a domestic call of any distance. In response to the loss of customers to such services, wireline companies began to offer all distance packages of their own. Today, TDS (and, indeed, most every carrier) offers a one-price bundle of local exchange and long distance. The predictable result is that customers increasingly receive their local and long distance services from one provider.[12] After all, when is the last time anyone saw an advertisement for long distance on the television or among the mail?

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[10] Public Notice, CC Docket No. 02-39, DA 07-1071 (Mar. 7, 2001).

[11] Petition of Qwest Communications International, Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets, WC Docket 05-333, Memorandum Opinion & Order, 22 FCC Rcd 5207 at ¶16 (2007) ("*Qwest Order*"). To some extent, the remnants of the stand-alone market for long-distance services are a product of state regulations that require local telephone companies to offer such services.

[12] Comments of Verizon at 5 (citing Press Release, *J.D. Power & Associates Reports: Three-Quarters of Households Now Bundle Local and Long-Distance Telephone Service with One Provider* (July 13, 2005)).

C. Equal Access Rules are Unnecessary and Do Not Serve the Public Interest

The equal access rules impose a variety of expensive requirements on ILECs such as TDS, including disclosure of technical information, information access, offering access services to competing long distance carriers, scripting, verification, and 1+ dialing. The scripting requirement alone — which requires TDS to read a list of long distance providers to new local customers — wastes valuable representative and customer time, with no corresponding benefit.

These burdens are being applied in what is now a "fringe market." The burdens simply no longer offset any possible harm. They were imposed when long distance was a large and free-standing business and competitors faced substantial obstacles. It is fair to say that the equal access rules benefited consumers by enabling new entrants in a vital and important sector. But the market sector is no longer vital nor important. In fact, one could argue that it no longer exists. And yet the rules remain. It is time for the Commission to accept this reality and revise its rules to reflect today's market.

Eliminating the equal access rules does not mean that no restrictions apply. Section 201 of the Communications Act already renders "unlawful" any "unjust or unreasonable" charge or practice. Section 202 likewise prohibits "unjust or unreasonable discrimination in charges, practices, . . . facilities, or services for or in connection with like communication service, directly or indirectly, through any means or device."[13] Moreover, Section 251(b)(3) requires all carriers to "provide dialing parity to competition providers" and to "permit all such providers to have nondiscriminatory access to telephone numbers, operator services, [etc.] with no unreasonable delays."[14] These statutory proscriptions provide ample protection for competing long distance providers by prohibiting known and unanticipated anti-competitive behaviors (such as refusing to allow a customer to reach his or her preferred provider).

II. STRUCTURAL REALITIES AND EXISTING STATUTORY AUTHORITY ENSURES THAT CONSUMERS WILL BE PROTECTED EVEN IN THE ABSENCE OF EQUAL ACCESS RULES

A. The Main Benefits of Equal Access Are Built into the Network

The Commission's application of equal access rules to ILECs such as TDS caused these companies to restructure their networks substantially by adding a process to route traffic based on customer's designations of a presubscribed carrier. Customers have come to understand and rely on these structures, and altering them again would be prohibitively costly. Were the Commission to retire the equal access rules, therefore, consumers would still benefit from "1+" dialing, which the Commission could make clear that carriers still must offer. And customers would continue to be able to change their presubscribed interexchange carrier ("PIC") at any time after notifying their LEC. These consumer-protective features that accomplish many of the equal access goals are part of the network itself, and they

[13] 47 U.S.C. §§ 201-202.

[14] 47 U.S.C. § 254(b)(3).

would be preserved. Other rules, however, such as scripting, are no longer justified and should be eliminated. In addition, the Commission has included "equal access" obligations in other contexts, such as universal service. A review should be made to determine whether those references still make sense in light of the changes contemplated here.

III. THE EQUAL ACCESS RULES ARE ONE PIECE OF LONG DISTANCE REGULATIONS THAT NO LONGER SERVE A PURPOSE IN TODAY'S COMMUNICATIONS WORLD

The requirements of equal access grew out of the 1982 Modification of Final Judgment ("MFJ") establishing the conditions for the break up of AT&T.[15] The Commission concluded subsequently that all ILECs should comply and, additionally, that all ILECs had to adhere to a requirement of structural separation — i.e., that long-distance and local services be provided through a separate affiliate. The 1996 Act later codified that requirement for RBOCs, but imposed a sun set.[16] The 1996 Act also added toll rate averaging, which requires uniformity among subscriber rates in low and high cost areas.[17]

TDS welcomes the Commission's initiative to review rules affecting the shrinking, fringe long distance market, and believes that it is also long past time to sunset the separate subsidiary requirements for independent ILECs. That the separate subsidiary requirement, in particular, should no longer apply to ILECs is

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[15] *See United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982).

[16] 47 U.S.C. § 272.

[17] *Id.* at § 254(g).

underscored by the fact that the requirement has sunset for every RBOC. The Commission even recently agreed to characterize Qwest — which is now free from the separate subsidiary requirement — as non-dominant when it provides long distance services on an integrated basis (as it is now permitted to do).[18] Meanwhile, there is absolutely no indication that ILECs pose a greater threat than RBOCs to in-region competition. (Indeed, three RBOCs control 85% of the ILEC loops in the United States.[19]) If anything, the Commission has repeatedly recognized the differences between the two categories of carriers in electing not to extend RBOC rules to ILECs. For instance, the Commission determined in *Computer II* and *Computer III* that neither the structural nor non-structural safeguards imposed on RBOCs with respect to the provision of enhanced services were necessary for smaller ILECs.[20] Thus, the Commission should move forward and revise its rules to match the reality of today's market.

In sum, equal access, separate subsidiary, and toll averaging were aimed at an industry landscape that no longer exists. As discussed above and at length in other comments, increased volume and type of competition has fundamentally altered the relevant markets. Moreover, and as a result, ILECs simply do not have the market power to dominate in-region telecommunications markets as once

[18] *See Qwest Order*.

[19] Comments of Embarq in CC Docket 02-39 (May 29, 2007) at 4.

[20] Comments of Embarq at 6-7 (citing Final Decision, *Amendment of Section 64.704 of the Commission's Rules and Regulations*, at ¶217 ("*Computer II Final Decision*"); *In the Matter of Amendment to Sections 64.702 of the Commission' s Rules et al*, Report & Order, CC Docket No. 85-229, 2 FCC Rcd 3072 (1987) ("*Computer II Phase II Order*")).

feared. As Embarq detailed at length in its comments, ILECs have no meaningful ability to drive rivals out of their respective markets.[21]

IV. CONCLUSION

For the reasons stated, TDS respectfully requests that the Commission revisit the necessity and fairness of key parts the equal access rules and their application to independent ILECs.

Respectfully Submitted,

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[21] *Id.* at 5.